

**IN THE UNITED STATES DISTRICT COURT
FOR THE SOUTHERN DISTRICT OF ILLINOIS**

**WESTERN-SOUTHERN LIFE
ASSURANCE COMPANY,**

Plaintiff,

v.

**DAVID B. POWERS, CLARENCE L. McCAY,
NANCY EDWARDS, VERONICA
BELAVICH, ESTATE OF LAVERNE
JOSEPHINE POWERS, DECEASED,
LAVERNE J. POWERS TRUST, LUCAS
WALDECK, LINDSEY WALDECK CASKEY,
DAVID WALDECK, MICHAEL POWERS,
ANGELA POWERS MARTORANO,
KELLY POWERS,**

Defendants.

Case No. 08-cv-426-DRH

FINAL DECREE OF INTERPLEADER

HERNDON, Chief Judge:

This cause comes on the written motion of plaintiff Western-Southern Life Assurance Company of America for entry of a final decree of interpleader and related relief, the Court having reviewed and considered plaintiff's written motion and the pleadings, admissions, cross-claims, counterclaims, and other pleadings and evidence of record in this Court's file and docket, and the Court being fully advised finds as follows:

1. This Court has subject matter jurisdiction of this cause under both **28 U.S.C. § 1332** and **28 U.S.C. § 1335**;

2. This Court has personal jurisdiction of all of the defendants and all the defendants except for David Waldeck have appeared herein by counsel of record;

3. David Waldeck is in default for failure to file an answer or motion under **FEDERAL RULE OF CIVIL PROCEDURE 12** despite having made a service waiver under **FEDERAL RULE OF CIVIL PROCEDURE 4**.

4. The total admitted liability of plaintiff Western-Southern Life Assurance Company under its contract number W-47721144 is \$47,155.14 and under contract number W-47721145 is \$47,372.70.

5. The Defendants, and each of them, have made rival, adverse, and conflicting claims to Western-Southern for benefits due under Western-Southern's annuity contract numbers W-47721144 and W-47721145 and Western-Southern is entitled to interpleader relief as prayed for in its Amended Complaint for Interpleader Relief and in its Motion for the Entry of this Final Decree (Doc. 65), moreover no party appearing objects to the entry of the entry of this final decree and as such, said Motion (Doc. 65) is **GRANTED**. The Court also finds good cause to **GRANT** Defendants' Motion for Order Authorizing and Directing the Clerk to Deposit Sums Paid by Plaintiff Into an Interest-Bearing Account (Doc. 67).

IT IS THEREFORE ORDERED, ADJUDGED AND DECREED THAT:

A. This Court has personal jurisdiction of the parties and subject matter

jurisdiction hereof under **28 U.S.C. § 1332** and **§ 1335** and venue is proper in this district.

B. Western-Southern is granted leave to deposit its admitted liability under its annuity contract numbers W-47721144 (\$47,155.14) and W-47721145 (\$47,372.70) into the Registry of this Court to be held in an interest-bearing accumulation account to be established by the Clerk of Court and to abide the further order of this Court, and upon such deposit is discharged in full from all liability under the two contracts and on account of the death of LaVerne Powers.

C. The defendants, David B. Powers; Clarence L. McCay; Nancy Edwards; Veronica Belavich; Estate of LaVerne Josephine Powers, Deceased; the LaVerne J. Powers Trust dated August 3, 1998; and Lucas Waldeck, Lindsey Waldeck Caskey, David Waldeck, Michael Powers, Angela Powers Martorano, and Kelly Powers, and each of them, and any person or entity claiming by or through them, are permanently and perpetually restrained and enjoined from commencing or prosecuting any proceeding or claim against Western-Southern in any state or federal court or any other forum with respect to the Western-Southern Life Assurance Company's admitted liability under its contract numbers W-47721144 and W-47721145 and on account of the death of LaVerne Powers and this injunction issues without bond or surety.

D. David Waldeck is bound by this and any other order, judgment, or settlement entered in this cause.

E. Western-Southern is excused from further attendance on this cause and

the defendants shall litigate their claims to Western-Southern's admitted liability on deposit with this Court without further involving Western-Southern.

F. Pursuant to **FEDERAL RULE OF CIVIL PROCEDURE 54(b)**, this decree is a final judgment and this Court expressly finds and determines that there is no just reason to delay enforcement or appeal of this order.

G. The parties are advised that upon withdrawal of the funds the Clerk of Court will retain a ten percent fee deducted only from the interest earned on the account established.

IT IS SO ORDERED.

Signed this 22nd day of November, 2009.

/s/ David R. Herndon

**Chief Judge
United States District Court**